

REMARKS

Claims 1-17 have been submitted for examination. First of all, it is noted that the "Disposition of the Claims" section of the office action is not accurate. Claims 1-17 are pending in this application, not Claims 1-10. The statement that Claims 1, 9 and 10 are rejected and Claims 2-8 are objected to, is also incorrect. All of the claims presently pending in this application have been rejected, save Claims 4 and 13 which have been objected to. Claims 1-17 have been canceled without prejudice and new Claims X-Y have been added. The specification has been amended to conform to the numerals used in FIG. 6 of the drawings.

These are the actual rejections. Claims 7, 8 and 14-17 stand rejected as being indefinite due to the recitation in these claims of the term "wells". Claims 1, 3, 5, 9, 10 and 11 stand rejected as being anticipated by newly cited Wilkins. Claims 1-3, 5-12, and 14-17 as being anticipated by newly cited Campbell.

The previous rejections of 1, 9 and 10 based on Bisconte have been withdrawn. The cancellation of Claims 1-17 render the above current rejections moot.

As previously noted, the factual determination of anticipation requires the disclosure in a single reference of every element of the claimed invention. See: Ex parte Levy, 17 USPQ2d 1461 (PTO Bd. of Pat. App. and Int. 1990). Furthermore, the allegedly anticipating reference must be enabling so that one reading the reference would be enabled to create the allegedly anticipated claimed subject matter.

With respect to new Claims 18-25, please note the following.

Wilkins

We will address this newly cited reference in the context of a §102 rejection. Wilkins discloses a microbial detection system and process. The system includes microbial culturing cells 24 which contain agar and the samples being tested for microbial growth. The cells 24 are mounted on a rotatable indexing table 25. FIG. 1 shows the several components of the system in a schematic form. The culture cells are transparent pyrex components which contain agar and can be back lit while mounted on the table 25. The cells 24 are indexed into alignment with a video camera 20 having a focussing lens 21. Images of the cells' contents are processed by a video processor 18 and transferred to a frame grabber 16 for storage in a computer 11. The contents of the cells 24 can be displayed on a visual monitor 12 of the computer. Microbe growth is thus periodically recorded and stored in the computer 11. The rate of microbe growth can thus be observed as well as the time when the first microbe colonies form in the agar.

Wilkins cannot be said to anticipate the subject matter of new Claims 18-25 for the following reasons.

1) The system of Wilkins is not an incubator for culturing embryos; does not have a controlled internal atmosphere; does not include a shelf containing a plurality of cup-shaped wells; does not include a plurality of embryo specimen containers positioned in incubator wells; does not include at least one embryo culturing fluid drop in embryo specimen containers; does not include internal signal producing optical imaging devices adjacent to bottom walls of cup-shaped wells in an incubator; and does not include at least one external image signal-processing device outside of an incubator that converts signals from internal imaging devices to visual images. (all of the claims)

2. The system of Wilkins does not disclose any of the structure recited in dependent Claims 19-25. For example, the cells 24 in Wilkins do not have bottom walls which include a lens; there are no drivers in Wilkins for selectively rotating the cells 24; the structure recited in Claim 22 is not found in Wilkins; there is nothing in Wilkins for controlling or monitoring incubator temperature and humidity; and the structure recited in Claim 25 is not found in Wilkins.

Thus, Wilkins cannot be said to anticipate the subject matter of any of Claims 18-25.

Campbell et al

The Examiner has characterized Campbell et al as disclosing a carrier having a plurality of wells for each housing an embryo, and states that the carrier is positioned within an incubator for controlling the environment conducive to the growth of the embryo. Each well is equipped with an imaging device for monitoring the growth of the embryo. In support of this analysis, the Examiner merely refers to the Summary of the Invention section of the reference. The above Examiner's assessment of what Campbell et al discloses is a mixture of fact and fiction.

Campbell et al really discloses an in vitro embryo culturing device 212 which actually takes the form of a miniaturized incubator (see FIGS. 1, 2 and 6). The reference states that the device 212 is small enough to be held in the palm of one's hand. The device 212 can only hold a single embryo E which is deposited in a well 214 in the device 212. The well 214 does have a lens 271 through which the embryo E can be observed during its development. Campbell et al does suggest the use of a CCD for observing and recording embryo growth (see FIG. 11). Thus the Examiner is correct in that regard. What the Examiner has characterized as "a carrier" is apparently what the patentee refers to as a

cartridge 300 (see FIGs. 12 and 14-16 for different cartridge configurations). The cartridge 300 can hold a number of the mini incubators 212, as shown in FIG. 12. The cartridge 300 itself, is never put into an incubator as the Examiner has stated. It can be put into a computerized embryo growth monitoring device 315, as shown in FIG. 17, but the device 315 is not an incubator. If the Examiner thinks that the Summary of the Invention is fully supported by the specification and drawings, we would appreciate clarification of where he finds such support. We do not. We have attempted to analyze the Campbell et al reference in more detail than the Examiner did, and we would certainly appreciate a more comprehensive explanation from the Examiner as to why he deems Campbell et al to be anticipatory of new Claims 18-25 if in deed he does.

Campbell et al does not anticipate any of Claims 18-25 of the instant application for the following reasons.

1. Campbell et al does not disclose an embryo growth-supporting incubator which has at least one specimen-supporting shelf in it, which shelf has a plurality of cup-shaped wells with transparent bottom walls; does not disclose the use of optically transparent Petrie dish embryo specimen containers disposed in any incubator wells and supported by bottom walls of the wells; and does not disclose optical imaging devices adjacent to bottom walls of the wells to observe embryo growth (Claims 18-25).
2. Campbell et al does not disclose embryo supporting cup shaped wells for containing Petrie dish embryo specimen containers wherein the wells have bottom walls which include a lens for optically magnifying embryo specimens in the Petrie dishes; does not disclose drivers for selectively rotating embryo Petrie dish containers and wells in which they are disposed to selectively align embryo specimens in the containers with the optical imaging device; does not disclose a system which includes any of the structural limitations set forth in Claim 22; and does not disclose any of the structure set forth in Claim 25.

It is clear that neither Wilkins nor Campbell et al anticipates the subject matter of new Claims 18-25.

It is respectfully submitted that this application is presently in condition for allowance. Early notice to that effect is courteously requested.

Respectfully submitted,


William W. Jones

Attorney for Applicant

Reg. No. 24,607

6 Juniper Lane

Madison, CT 06443

(203) 245-2418

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